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**FEB 13 2008**

**OFFICE OF PETITIONS**

In re Application of :  
Fleury et al. : DECISION ON PETITION  
Application Number: 09/083180 :  
Filing Date: 05/22/1998 :  
Attorney Docket Number: :  
612.36255X00 :  
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This is a decision in reference to the "RENEWED PETITION FOR EXPEDITED CONSIDERATION OF AUGUST 5, 1999 RESPONSE TO NOTICE OF ABANDONMENT," filed on January 29, 2008, which is treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED**.

This application was held abandoned for failure to timely file a response to the Notice to File Missing Parts of Application mailed on June 9, 1998, which set a two (2) month shortened period for reply. On July 9, 1999, Notice of Abandonment was mailed.

Petitioners assert that a timely response to the Notice was filed on August 7, 1998.

A review of the record reveals the following:

1. On May 22, 1998, the application was filed.
2. On June 9, 1998, the Notice to File Missing Parts was mailed, stating the oath or declaration was missing or unexecuted, and that an executed declaration and a surcharge for its late filing were required.

3. On July 9, 1999, a Notice of Abandonment was mailed.

4. On October 5, 2005, a "PETITION FOR EXPEDITED CONSIDERATION OF AUGUST 5, 1999 RESPONSE TO NOTICE OF ABANDONMENT" was filed. The petition stated that a "RESPONSE TO NOTICE OF ABANDONMENT" was timely filed on August 5, 1999. In support, petitioner provided a postcard showing an "Office-date" stamp of August 5, 1999. The postcard identified the application by the first named inventor's name, attorney docket number, and filing date. It is noted that the application number on the postcard is miscaptioned as "08/083,180". A copy of the response, asserting that a timely response to the Notice of Abandonment asserting that a timely reply to the Notice to File Missing Parts was timely filed, was also included. The "RESPONSE TO NOTICE OF ABANDONMENT" also miscaptions the application number as indicated above.

Additionally, a copy of petitioners' response to the Notice to File Missing Parts was also filed. The response was accompanied by a postcard showing an Office-date stamp of August 7, 1998, and identifying the filing of the response by the application number, first named inventor's name, filing date, and attorney docket number, and itemizing the filing of, *inter alia*, the response to the Notice to File Missing Parts, an executed declaration, and the late-filing surcharge.

It is additionally noted that although the application number is correctly captioned on the postcard bearing an Office date stamp of August 7, 1998, the application number was also miscaptioned as "08/083,180" on the "RESPONSE TO NOTICE TO FILE MISSING PARTS OF APPLICATION."

5. On January 25, 2008, the present paper was filed, accompanied by a copy of the previously filed papers.

The petition must be dismissed at this time, however, because the extended period between the filing of the original petition to withdraw the holding of abandonment on August 5, 1999, and the filing of the subject petition on January 25, 2008, obligates the Office to inquire into the reasons for the delay.

MPEP 203.08, states, in pertinent part that in the event that a six month period has elapsed, and no response from the Office is received, applicant should inquire as to the status of the application to avoid potential abandonment. A stamped postcard receipt for replies to Office actions, adequately and specifically identifying the papers filed, will be considered

prima facie proof of receipt of such papers. See MPEP § 503. Where such proof indicates the timely filing of a reply, the submission of a copy of the postcard with a copy of the reply will ordinarily obviate the need for a petition to revive. Proof of receipt of a timely reply to a final action will obviate the need for a petition to revive only if the reply was in compliance with 37 CFR 1.113.

Accordingly, the Office is requesting additional information regarding the delay between the filing of the petition on August 5, 1999, the filing of the petition filed on October 7, 2005, and the filing of the renewed petition on January 29, 2008. Any renewed petition must be accompanied by affidavits or declarations of facts by persons having first-hand knowledge of the circumstances surrounding the delay, setting forth the facts as they know them. Petitioner may also wish to submit any docket reports or other contemporaneous documentation which would establish a showing of diligence throughout the period described above.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. **This period may not be extended.**<sup>1</sup>

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
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Alexandria, VA 22313-1450

By FAX: (571) 273-8300  
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By hand: Customer Service Window  
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<sup>1</sup> 37 CFR 1.181(f).

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.



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Office of Petitions